

Study Commission on the Future of the Indiana Bar Examination

**Notice of Meeting
Thursday, March 14, 2019
1:30 PM**

The next meeting of the Study Commission on the Future of the Indiana Bar Examination will be held on Thursday, March 14, 2019 at 1:30 pm (Eastern time) in the Indiana Court of Appeals Courtroom located in Room 413 of the Indiana State House.

The Hon. Mary R. Russell, member of the Missouri Supreme Court, and Andrea Spillars, Executive Director of the Missouri Board of Law Examiners, will be making a presentation regarding Missouri's experience with the Uniform Bar Exam.

Hon. Randall T. Shepard
Chair

Hon. Nancy H. Vaidik
Vice Chair

**Study Commission on the
Future of the Indiana Bar Examination**

**Meeting Minutes
March 14, 2019**

Members present: Hon. Randall T. Shepard (Chair); Hon. Cristal Brisco; Hon. Kenton Kiracofe; Dean Andrew Klein; Yvette LaPlante; Jon Laramore; John Maley; Dean Austen Parrish; Leah Seigel; Cathleen Shrader; Bradley Skolnik (Ex Officio). The meeting convened at 1:30 p.m.

1. Call to Order

Chief Justice Shepard, Chair, called the meeting to order at 1:30 p.m.

2. Presentation by Hon. Mary R. Russell and Andrea Spillars Regarding Missouri's Experience with the Uniform Bar Examination

The Hon. Mary R. Russell and Andrea Spillars appeared in person at the meeting to discuss Missouri's experience as the first state to adopt the Uniform Bar Examination (UBE).

Judge Russell is a member of the Missouri Supreme Court. She was first appointed to the Court in September 2004 and from July 2013 through June 2015 served a two-year term as Missouri's Chief Justice. Ms. Spillars was appointed Executive Director of the Missouri Board of Law Examiners in June 2017. She has spent her career in public service, including stints as Deputy Director and General Counsel for the Missouri Department of Public Service and as Counsel to the Governor.

a. Judge Russell

Judge Russell noted at the outset that it is not her intent to advocate for the adoption of the UBE, but rather to discuss Missouri's experience with the exam and its effect on the bar admissions process.

Judge Russell observed that Missouri has been administering the UBE since the February 2011 bar exam. Prior to that time, Missouri administered a bar examination consisting of the Multistate Bar Examination (MBE), one Multistate Performance Test (MPT) question, and 10 essay questions, four of which were written by the Missouri Board of Law Examiners and six of which were the Multistate Essay Examination (MEE) questions prepared by the National Conference of Bar Examiners (NCBE). The cut (passing) score was 260.

The Missouri Supreme Court thought things were going rather smoothly with the Missouri bar examination. Although there had been periodic complaints about some essay questions written by the Missouri Board of Law Examiners, the Court had no reason to believe that the exam needed to be changed. However, in 2009 when the Court met with the Deans of the four Missouri law schools, it learned for the first time that 6 of the 10 essay exams on the Missouri bar exam were written by the NCBE.

Initially, Judge Russell and her colleagues on the Court were concerned that over half of the ten essay questions on the Missouri bar exam were written by the NCBE and not the Missouri Board of Law Examiners. Those concerns were assuaged though when it was explained to the Court how the essay questions prepared by the NCBE are drafted by subject matter experts, pre-tested and subjected to rigorous scrutiny for validity. The Court was previously unaware of the professionalism with which the NCBE's questions were drafted. In addition, the Court learned about the grading workshops and grading materials that the NCBE made available for graders who grade the NCBE's questions.

When the Missouri Supreme Court was told about the UBE in 2009, it learned that the exam contained several components that Missouri was already using in its exam. The Court was nevertheless concerned about how applicants would be tested on state specific Missouri law if it adopted the UBE. However, the Court also realized that young lawyers are more transient than in the past and that bar applicants often do not know for sure where they will start their careers when they sign up to take the bar exam. According to Judge Russell, the Court did not want its admission process to be an impediment to the career aspirations of young lawyers. Like other professions, such as accountants and doctors, the Court felt that lawyers should take the same exam regardless of where it is administered.

Judge Russell noted that while the UBE allows for a local component, the Missouri Supreme Court did not want the bar exam to expand to include a third day. The Missouri Supreme Court and its Board of Law Examiners, therefore, developed a mandatory online open-book 33 question Missouri Educational Component Test (MECT) that all applicants are required to successfully complete as a condition of admission. Review materials consisting of 11 outlines on Missouri law on Torts, Civil Procedure, Real Property, Trusts, Estates, Family Law, Business Associations, Administrative Law, Evidence, Missouri Courts and Trust Account Management are posted on the Missouri BLE website.

In late 2009, the Missouri's Supreme Court decided to become the first UBE state. It officially adopted the UBE in early 2010, followed soon thereafter by North Dakota. Missouri administered its first UBE on the February 2011 bar exam. It retained its cut score of 260.

b. Andrea Spillars

Ms. Spillars discussed the impact that the UBE has had on bar admissions in Missouri. She noted that before Missouri adopted the UBE, effective February 2011, they were already experiencing fluctuations in bar passage rates.

Prior to Missouri's adoption of the UBE, the MBE only comprised 40% of an applicant's exam score. The UBE weighs the MBE as 50% of the exam score. Ms. Spillars contends, however, that there is no correlation between the UBE and passage rates in Missouri. According to Ms. Spillars, her analysis of the data leads her to believe that changes in passage rates are not attributable to the UBE, but rather to factors such as the decline in law school enrollment and falling LSAT scores. Ms. Spillars discussed the following documents she handed out to the members of the Study Commission:

- Exhibit A: Total Missouri Bar Exam Takers 2004-2018
- Exhibit B: July Missouri Bar Exam Passage Rates 2004-2018
- Exhibit C: February Missouri Bar Exam Passage Rates 2004-2018
- Exhibit D: National LSATs Administered 1987-2018
- Exhibit E: National Law School Enrollment 1987-2018

Ms. Spillars stated that the MECT is not intended to be a competency test, but, instead, is designed simply to expose to distinctive areas of Missouri law. Outlines on the areas of Missouri law tested on the MECT are posted online. Applicants have one year from the date of filing their application within which to successfully complete the MECT. They may take the test as many times as is necessary to achieve a passing score. The Missouri Board of Law Examiners does not track passage rates on the MECT, nor do they know how many times an applicant takes the test. Upon passing the test, an applicant provides the Board of Law Examiners with a copy of the certificate of successful completion. A description of the MECT from the Missouri Board of Law Examiners website distributed by Ms. Spillars to the members of the Study Commission is attached hereto as Exhibit F.

The MECT and the subject matter outlines are prepared by the Missouri Board of Law Examiners. Ms. Spillars tracks legislation and makes sure the outlines are updated to reflect changes in law. The Board of Law Examiners is responsible for writing the 33 test questions which are updated annually.

According to Ms. Spillars, the adoption of the UBE has been a positive development. When she goes to law schools in Missouri and Kansas, Ms. Spillars finds that as many as 40% of students do not know, for sure, where they will start their legal careers. Knowing that their test scores are portable relieves some of stress that many students experience during the bar application process. In addition, many attorneys in the Kansas City and St. Louis metropolitan areas have multi-state practices, so the UBE relieves them from having to take more than one bar exam if they want to be licensed in more than one jurisdiction. UBE scores earned by an applicant in another state may be transferred in to Missouri for a period of five years.

Ms. Spillars said the graders like the fact that the grading materials developed by the NCBE for the MPT and MEE test questions are very good and that the NCBE sponsors grading workshops each exam cycle that they can attend. The Missouri Board of Law Examiners would not otherwise have the resources to provide this level of support and assistance for its graders.

Ms. Spillars concluded by noting that from an “administrative standpoint” and for applicants and students the UBE has been a positive. She states that she “wouldn’t want to go back to the way it was before.”

c. Questions for Judge Russell and Ms. Spillars

Following their presentations, Judge Russell and Ms. Spillars answered questions from members of the Study Commission.

In response to a question from Jon Laramore regarding grading, Ms. Spillars stated that Missouri uses 16 graders divided into eight teams of two graders each who grade the two MPT questions and the six MEE essay questions. Each team is responsible for grading one question and the two graders calibrate every twenty minutes.

Dean Austen Parrish inquired about whether Missouri has any data on applicants who have transferred their UBE scores from another state into Missouri and what effect the portability of UBE scores has had on the number of applicants seeking admission on motion. According to Ms. Spillar, Missouri has tracked the number of applicants that transfer their UBE scores from another jurisdiction into Missouri on an annual basis. She indicated that back in 2012 only two applicants transferred their UBE scores into Missouri, but in 2018, there were 109 applicants who transferred their UBE scores into the state. It is important to note that an applicant's result on the UBE exam is not a status, but simply a score that is transferred to another state. All applicants who transfer their UBE score into Missouri undergo the same character and fitness investigation as an applicant who sits for the exam in Missouri.

Ms. Spillars believes that the adoption of the UBE has resulted in a decline in the number of out-of-state attorneys seeking admission on motion because they can now transfer UBE scores in from another jurisdiction. She also indicated that Missouri does not allow courtesy seating at its exam, i.e., applicants who have no intention of seeking admission in the state, but sit for the exam simply to obtain a UBE score for transfer to another jurisdiction.

In response to a question from Dean Andrew Klein, Ms. Spillars states that Missouri uses forced rank order in connection with the grading of written questions. She states that this is consistent with sound testing principles.

John Maley inquired further regarding the graders employed by the Missouri BLE to grade the answers to the written questions. According to Ms. Spillars, two of the graders are circuit court judges and the rest are practicing attorneys. Some of the graders have more than 25 years' experience in grading bar exam questions.

In response to a question from Bradley Skolnik about how the UBE was received by the legal community, Judge Russell stated that most experienced attorneys are likely not aware of changes made to the bar exam. She indicated that the Court has not observed any decline in attorney competency since the adoption of the UBE but did acknowledge that is something that is likely difficult to gauge.

Judge Russell concluded by noting that the Conference of Chief Justices passed a resolution urging the adoption of the UBE because, among other things, it allows for of portability bar exam scores, resulting in greater mobility and flexibility for recent graduates seeking employment. She observed that with Texas recently announcing that it is joining the fold, there are now 35 UBE jurisdictions. The decision whether to adopt the UBE, however, is an "individual state decision" that needs to be made by each jurisdiction.

3. Future Meetings

The following speakers are tentatively scheduled for future Commission meetings:

a. April Meeting

Judith Wegner
Former Dean
University of North Carolina School of Law

Roger Bolus, Ph.D.
Senior Partner
Research Solutions Group

b. May Meeting

Aaron N. Taylor
Executive Director
AccessLex Center for Legal Education Excellence

c. June Meeting

Judith A. Gundersen
President and CEO
National Conference of Bar Examiners

4. Adjournment

The meeting adjourned at 2: 53 p.m.